

Richard J. Crane, #C-44519
Salinas Valley State Prison
P.O. Box 1050
Soledad, CA 93960-1050

FILED

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RICHARD W. WIERING
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U.S. DISTRICT COURT
NO. DIST. OF C.A. S.J.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

RICHARD J. CRANE,) No. C-07-4620-JF
Plaintiff,) PLAINTIFF'S REPLY TO
vs.) DEFENDANT'S OPPOSITION TO
D. AMBRIZ, et al.,) PLAINTIFF'S MOTION FOR USE
Defendants.) OF PERSONAL TYPEWRITER

The plaintiff respectfully submits this reply to Defendants' Opposition to Plaintiff's Motion for Use of Personal Typewriter, pursuant to Local Rule 7-3(c).

INTRODUCTION

23 On August 4, 2008, plaintiff received Defendants'
24 Opposition to plaintiff's ex parte motion for use of his
25 personal typewriter. The opposition is totally incorrect.
26 All of the Defendants' except for C.O. Zornes, took actions
27 against the plaintiff to place him in Ad Seg and "ruin his case"
28 by confiscating his typewriter, and stealing typewriter ribbons.

1 On March 12, 2008, (8 days before Ad Seg) Defendant Ambriz
 2 said to C.O. Dotson: "Throw him in Ad Seg, ruin his case." (See,
 3 First Amend. Compl. Exh. 'I' Affidavit of Semanu Milo, filed on
 4 March 14, 2008.)

5 On March 20, 2008, Defendant Mantel was the supervising
 6 official (Captain) responsible for placing plaintiff in Ad Seg
 7 on a fabricated (Non-existent) offense. Mantel Chaired March
 8 21, 2008, hearing and ordered plaintiff's retention in Ad Seg,
 9 and on March 27, 2008, extended his Ad Seg on a false claim
 10 that, the investigation was not completed. (See, Exh. A and B.)

11 Defendants' Mantel and G.A. Neotti denied plaintiff's
 12 administrative appeal at the First and Second Levels each
 13 respectively, affirming plaintiff's unconstitutional Ad Seg to
 14 keep his typewriter and obstruct or ruin his case against them.

15 Defendant G.A. Neotti denied plaintiff's administrative
 16 appeal for access to his typewriter at the Second Level, No.
 17 SVSP-D-08-02021, clearly to obstruct this lawsuit and retaliate.

18 Defendant Hatton was the Lieutenant on duty March 20, 2008
 19 supervising plaintiff's Ad Seg placement to have his typewriter
 20 taken, obstruct this lawsuit and retaliate against him.

21 March 20, 2008, Defendant Galloway was the Sergeant, and
 22 personally approved of C.O. Dotson's inventory of plaintiff's
 23 property and signed the forms which were blank of typewriter,
 24 typewriter ribbons and most of all plaintiff's property to
 25 conceal and cover up theft of ribbons and daisy print wheels.

26 These Defendants' acted in concert to obstruct justice in
 27 violation of Title 42 U.S.C. §1985(a)(2).
 28

LEGAL ARGUMENT

On March 20, 2008, these Defendants' conspired to further retaliate against the plaintiff for suing them, and fabricated a allegation without any evidence, but claimed a confidential source to prevent review and the discovery that no evidence supported plaintiff's Ad Seg. (See, Nonnette v. Small (9th Cir. (Cal.) 2002) 316 F.3d 872, 878-879.)

On March 24, 2008, Defendant Ambriz retaliated and back-dated an RVR which was delivered to plaintiff in Ad Seg, and this was done to bolster the fabricated allegation of threats against staff. (Exh. C.) (See, Johnson v. Litscher (7th Cir. 2001) 260 F.3d 826, 830-831.)

The March 24, 2008, RVR is a separate retaliatory action by Ambriz, as the Ninth Circuit stated where a prisoner was disciplined for "coercing or attempting to coerce any official action" when he told correctional officer that he would inform the court about the officer's behavior in his pending lawsuit; there was a triable issue of fact whether the prison regulation authorizing such punishment violated free speech rights. Hargis v. Foster (9th Cir. 2002) 312 F.3d 404.

Further, when prosecuting a lawsuit, a prisoner proceeding in pro se has the constitutional right to undertake legal investigation and documentation of his claims in the manner any attorney would, subject to prison security and disciplinary requirements. Valandingham v. Bojorquez (9th Cir. 1989) 866 F.2d 1135.

1 The lawsuit stems from C.O. Ambriz turning off the
 2 electrical power into plaintiff's cell to prevent him from
 3 typing litigation against Salinas Valley State Prison and the
 4 Guards in case No. C-07-0763-JF. Therefore, the intention of
 5 the Defendant(s) has been to stop his use of his typewriter,
 6 and this is retaliation. (See, Hines v. Gomez (9th Cir. 1997)
 7 108 F.3d 265; DeWalt v. Carter (7th Cir. 2000) 224 F.3d 607.)

8 The Defendants' used the unconstitutional placement of
 9 plaintiff in Ad Seg to achieve the very same ends (to take his
 10 typewriter), and committed numerous violations of plaintiff's
 11 First and Fourteenth Amendment rights violating Cato v. Rushen
 12 (9th Cir. 1987) 824 F.2d 703, 705-706. (See, Exhibits D and E.)

13 The Defendants confiscation of his typewriter does not
 14 meet the "Turner Test," and is clear obstruction of plaintiff's
 15 lawsuits without any penological objective. (Bradley v. Hall
 16 64 F.3d 1276, 1280: "Where appropriate, we must also look to
 17 see if the prison rule is an "exaggerated response to prison
 18 concerns." Turner v. Safley, 482 U.S. at 89-90, 107 S.Ct. at
 19 2261-62. In order to determine whether a rule, even if
 20 rationally related to a legitimate interest, is an exaggerated
 21 response, we must balance the importance of the prisoner's
 22 infringed right against the importance of the penological
 23 interest served by the rule. We must also examine the strength
 24 of the logical nexus between the penological purpose served and
 25 restriction of the prisoner's rights.")

26 The Defendants' Opposition does not cite any authority,
 27 nor mention a legitimate basis for withholding his typewriter.

Further, Defendants' Opposition in argument II (Defs.' Opp. pg. 3), is moot, since the First Amended Complaint has rendered all pending motions as moot because they do not relate to the operative First Amended Complaint. (See, Doe v. United States (9th Cir. 1995) 58 F.3d 494, 496-97.)

CONCLUSION

Wherefore, the plaintiff respectfully prays that this Honorable Court shall grant his motion for access to his personal typewriter in his cell with extension cord, since it is less dangerous than a Television; further, Defendants' could grant plaintiff Temporary Transport Unit (TPU), but have singled out plaintiff for retaliatory punishment without any RVR or supporting reason.

VERIFICATION

I, Richard J. Crane, do hereby affirm under the penalty of perjury that the foregoing is true and correct to the best of his knowledge.

Dated: August 06, 2008.

Respectfully submitted,

Richard J. Crane

Richard J. Crane, in pro se

EXHIBIT A

FROM: A3124 TO: D9-196

DISTRIBUTION
WHITE - CENTRAL FILE
BLUE - INMATE (2ND COPY)
GREEN - ASUCANARY - WARDEN
PINK - HEALTH CARE MGR
GOLDENROD - INMATE (1ST COPY)

INMATE'S NAME

CPANE

CDC NUMBER

C44519

REASON(S) FOR PLACEMENT (PART A)

 PRESENTS AN IMMEDIATE THREAT TO THE SAFETY OF SELF OR OTHERS JEOPARDIZES INTEGRITY OF AN INVESTIGATION OF ALLEGED SERIOUS MISCONDUCT OR CRIMINAL ACTIVITY ENDANGERS INSTITUTION SECURITY UPON RELEASE FROM SEGREGATION, NO BED AVAILABLE IN GENERAL POPULATION

DESCRIPTION OF CIRCUMSTANCES WHICH SUPPORT THE REASON(S) FOR PLACEMENT

Administrative Segregation pending your involvement in a threat against staff at Salinas Valley State Prison/Facility A-SV. This is due to staff at Facility A-SV having received confidential information implicating you with regard to the aforementioned (alleged) offense. Your continued presence on Facility A would not only compromise the integrity of the investigation, but your continued presence is deemed an immediate threat to the safety and security of the institution. You will remain in Admin. pending completion of the investigation (to be conducted by Officer Wilson, of the ISU), possible adjudication of the disciplinary process, and ICC review for future programming and housing needs. This placement is ordered by Lieutenant G. Biagini, and it may affect your custody level, credit earning, privilege group and visiting status. You are not a participant in the Mental Health Services Delivery System at any level of care.

<input type="checkbox"/> CONTINUED ON ATTACHED PAGE (CHECK IF ADDITIONAL)		<input checked="" type="checkbox"/> IF CONFIDENTIAL INFORMATION USED, DATE OF DISCLOSURE: 3/20/08	
DATE OF ASU PLACEMENT 03-20-08	SEGREGATION AUTHORITY'S PRINTED NAME G. Biagini	SIGNATURE	TITLE Lieutenant
DATE NOTICE SERVED 3-20-08	TIME SERVED 1250	PRINTED NAME OF STAFF SERVING ASU PLACEMENT NOTICE V. LIZAOLA	SIGNATURE O. Peral
STAFF'S TITLE C/I	CDC NUMBER		
<input checked="" type="checkbox"/> INMATE REFUSED TO SIGN	INMATE SIGNATURE KTS		

ADMINISTRATIVE REVIEW (PART B)

The following to be completed during the initial administrative review by Captain or higher by the first working day following placement

STAFF ASSISTANT (SA)		INVESTIGATIVE EMPLOYEE (IE)	
STAFF ASSISTANT'S NAME	TITLE	INVESTIGATIVE EMPLOYEE'S NAME	TITLE
IS THIS INMATE:			
LITERATE? FLUENT IN ENGLISH? ABLE TO COMPREHEND ISSUES? FREE OF MENTAL HEALTH SERVICES DELIVERY SYSTEM NEEDS? DECLINING FIRST STAFF ASSISTANT ASSIGNED?	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	EVIDENCE COLLECTION BY IE <input type="checkbox"/> UNNECESSARY DECLINED ANY INVESTIGATIVE EMPLOYEE ASU PLACEMENT IS FOR DISCIPLINARY REASONS DECLINED 1ST INVESTIGATIVE EMPLOYEE ASSIGNED	<input type="checkbox"/> YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
Any "NO" requires SA assignment		Any "NO" may require IE assignment	
<input checked="" type="checkbox"/> NOT ASSIGNED	<input type="checkbox"/> NOT ASSIGNED		

INMATE WAIVERS

<input checked="" type="checkbox"/> INMATE WAIVES OR DECLINES INTERVIEW WITH ADMINISTRATIVE REVIEWER	<input checked="" type="checkbox"/> INMATE WAIVES RIGHT TO 72 HOURS PREPARATION TIME
<input checked="" type="checkbox"/> NO WITNESSES REQUESTED BY INMATE	INMATE SIGNATURE
DATE	

WITNESSES REQUESTED FOR HEARING

WITNESS' NAME	TITLE/CDC NUMBER	WITNESS' NAME	TITLE/CDC NUMBER
WITNESS' NAME	TITLE/CDC NUMBER	WITNESS' NAME	TITLE/CDC NUMBER

DECISION: <input type="checkbox"/> RELEASE TO UNIT/FACILITY	<input checked="" type="checkbox"/> RETAIN PENDING ICC REVIEW	<input checked="" type="checkbox"/> DOUBLE CELL	<input type="checkbox"/> SINGLE CELL PENDING ICC
REASON FOR DECISION: PICK ONE OR MORE IMMEDIATE THREAT TO THE SAFETY OF SELF OR OTHERS			

ADMINISTRATIVE REVIEWER'S PRINTED NAME J. L. BAGG	TITLE SUPERVISOR	DATE OF REVIEW 3-24-08	TIME 0900	ADMINISTRATIVE REVIEWER'S SIGNATURE J. L. BAGG
CORRECTIONAL ADMINISTRATOR'S PRINTED NAME (if necessary)		CORRECTIONAL ADMINISTRATOR'S CO-SIGNATURE (if necessary)		DATE OF REVIEW

EXHIBIT B

NAME: CRANE

CDCR #: C44519

BED: D9-196L

COMMITTEE ACTION SUMMARY

RETAIN ASU PENDING COMPLETION OF INVESTIGATION BY SVSP-ISU, CONFIRM DOUBLE CELLING/PLACE ON WALKALONE YARD. PSYCH. CLEAR.

COMMITTEE'S COMMENTS

Inmate CRANE appeared before Salinas Valley State Prison's (SVSP's) Administrative Segregation Unit (ASU) Institutional Classification Committee (ICC) today for his Initial ASU Review. CRANE stated that his health was good and was willing to proceed. CRANE received his 72-hour notice for the purpose of this review. Prior to committee reviewing and discussing this case, CRANE was introduced to the committee members. According to CRANE'S CDC 114D, he was placed into SVSP's ASU on 3/20/2008 for: Involvement threats against staff. ICC notes that the inmate was placed in ASU for possible involvement of making threats against staff. ICC notes that the case will not be referred to CSR for ASU extension. ICC notes that the investigation will be completed within thirty (30) days and the inmate will be seen at his program review for appropriate programming needs.

Based upon a review of CRANE'S CDC 114D, Central File, case factors, and thorough discussion with him, committee elects to: Retain ASU pending completion of investigation by SVSP-ISU, confirm double celling/Place on walkalone yard. Psych. Clear.

At the conclusion of this review, CRANE was informed of his Appeal Rights with regards to this committee's actions. CRANE acknowledged his understanding and disagreement with committee's actions.

STAFF ASSISTANT

Not Assigned: (Issues not complex and non-participant in MHSDS)

INMATE'S CASE FACTORS

CUSTODY	PS/LEVEL	WG/PG & EFF. DATE	RELEASE DATE	GPL	RECLASS	ETHNIC	PSYCH - DATE 128C	NEXT BPT & DATE
MAX	119/IV	DID - 3/20/2008	MEPD 5/10/1997	9.7	5/11/2008	WHI	Clear	SUB 2 3/2007

COMMITTEE MEMBERS

MEMBERS

D. Mantel, FC.; D. Hamlin, Psy.D

A. Williams

A. Williams, CCII (Sup)
RECODER

Committee Date: 3/27/2008

INITIAL ASU REVIEW

Committee: A032708ALW1

Typed By: ALW - Distribution: C-File & Inmate

SALINAS VALLEY STATE PRISON

Classification Chrono CDCR 128G (Rev: 10/07)

INMATE COPY

EXHIBIT C

RULES VIOLATION REPORT

FPP

CDC NUMBER C-4519	INMATE'S NAME CRANE	RELEASE/BOARD DATE 05/10/1987	INST. SVSP	HOUSING NO. A3-1241	LOG NO. ACG-CG-1023
VIOLATED RULE NO(S). C.C.R. 5013	SPECIFIC ACTS Unlawful Influence	LOCATION Fac. "A" Bldg. 3	DATE 03/16/08	TIME 1320 hours	
CIRCUMSTANCES					

On 03/16/08, at approximately 1320 hours, while I was performing my duties as Facility A-3 Control Booth Officer, I observed Inmate CRANE (C-4519, A3-1241) attempt to exit his cell during lower tier RDO only yard release. Inmate CRANE was given a direct verbal order by Correctional Officer Seward Unit 3 Floor Officer, to return to his assigned cell. Inmate CRANE then loudly demanded that he be released to the yard so that he can conduct interviews for his lawsuits against myself and other staff members. Officer Seward stated to Inmate CRANE that unless Facility Staff has been given a memorandum to allow said time, that all his legal matters need to be completed on his own time. Inmate CRANE then loudly stated, "Then I'll just add you to my lawsuit." Inmate CRANE still refused to return to his cell and further stepped out into the dayroom in an attempt to provoke myself. He then loudly and aggressively yelled to me, "You have to let me out to the yard so I can interview witnesses in my federal lawsuit against you guys."

CONTINUED SEE CDCR 115-C

Inmate CRANE is not a participant in the Mental Health Services Delivery System.

REPORTING EMPLOYEE (Typed Name and Signature) ► D. Ambriz, Correctional Officer			DATE	ASSIGNMENT A-3 Cont. Booth Officer	RDO'S M/T
REVIEWING SUPERVISOR'S SIGNATURE ►			DATE	□ INMATE SEGREGATED PENDING HEARING	
CLASSIFIED □ ADMINISTRATIVE □ SERIOUS	OFFENSE DIVISION: D	DATE	CLASSIFIED BY (Typed Name and Signature) ►		HEARING REFERRED TO □ HO □ SHO □ SC □ FC
COPIES GIVEN INMATE BEFORE HEARING					
□ CDC 115 ACG-CG-1023	BY: (STAFF'S SIGNATURE) ►	DATE 3/16/08	TIME 1320	TITLE OF SUPPLEMENT	
□ INCIDENT REPORT LOG NUMBER:	BY: (STAFF'S SIGNATURE) ►	DATE	TIME	BY: (STAFF'S SIGNATURE) ►	DATE TIME

HEARING

REFERRED TO CLASSIFICATION BPT/NAEA

ACTION BY: (TYPED NAME)		SIGNATURE ►	DATE	TIME
REVIEWED BY: (SIGNATURE) ►		DATE	CHIEF DISCIPLINARY OFFICER'S SIGNATURE ►	
□ COPY OF CDC 115 GIVEN INMATE AFTER HEARING		BY: (STAFF'S SIGNATURE) ►	DATE	TIME

EXHIBIT D

State of California

No. C-44519

NAME: CRANE

Department of Corrections
CDC 128-G

Comment: 30 day ASU extension from this date approved to complete casework as described herein.
S was originally placed in ASU due to confidential information implicating S in making threats against staff. S was issued a CDC 1030 citing a confidential memorandum dated 3-20-08. There is not a confidential memo dated 3-20-08 in the confidential file. It appears that the memorandum in question is dated 3-24-08. The CDC 1030 needs to accurately reflect the information. Clarification is requested regarding enemy concerns noted in confidential memo dated 3-24-08 as there appears to be conflicting information. As the basis of the ASU placement it was due to a potential SHUable offense a closure statement is needed to address the RVR. If committee acts to retain S in ASU a new CDC 114D is required.

Return to CSR no later than 6/12/2008 with status update.

J Parker
J Parker, CSR

Classification - CSR ACTION

SVSP

Williams

Date: 5/13/2008

EXHIBIT E

State of California

Department of Corrections
CDC 128-G

No. C-44519

NAME: CRANE

Comment: DEFERRED.

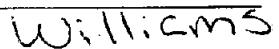
This case was referred for alternate SNY endorsement but it cannot be endorsed at this time because of a due process omission that requires a return to ICC. The inmate was originally placed in AU for investigation of threats against staff. The reasons for retention changed to confidential enemy concerns and the inmate received a new CDC-114d but did not receive a CDC-1030 with the new information. Also, the referring CDC-128g does not give a clear reason about why the inmate cannot remain at SVSP. This case is referred back to ICC for a new placement hearing and referral after a new 1030 is issued to the inmate. A 30 day ASU extension is approved to facilitate this issue. Please return the case to the CSR NLT 7/20/08.


E. Donnelly, CSR

Date: 6/20/2008

Classification - CSR ACTION

SVSP


Williams

STATE OF CALIFORNIA
COUNTY OF MONTEREY

(C.C.P. SEC. 466 & 2015.5; 28 U.S.C. SEC. 1746)

I, Richard J. Crane declare under penalty of perjury that: I am the Plaintiff in the above entitled action; I have read the foregoing documents and know the contents thereof and the same is true of my own knowledge, except as to matters stated therein upon information, and belief, and as to those matters, I believe they are true.

Executed this 6th day of August, 2008, at Salinas Valley State Prison, Soledad, California 93960-1050.

(Signature)


DECLARANT/PRISONER

PROOF OF SERVICE BY MAIL

(C.C.P. SEC 1013(a) & 2015.5; 28 U.S.C. SEC. 1746)

I, Richard J. Crane, am a resident of California State Prison, in the County of Monterey, State of California; I am over the age of eighteen (18) years and am ~~not~~ a party of the above entitled action. My state prison address is: P.O. Box 1050, Soledad, California 93960-1050.

On August 6th, 2008, I served the foregoing: PLAINTIFF'S REPLY TO DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR USE OF PERSONAL TYPEWRITER

(Set forth exact title of document(s) served)

On the party(s) herein by placing a true copy(s) thereto, enclosed in sealed envelope(s), with postage thereof fully paid, in the United States Mail, in a deposit box so provided at Salinas Valley State Prison, Soledad, California 93960-1050.

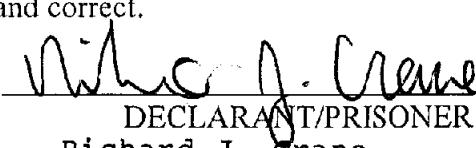
Danielle O'Bannon, Attorney General
455 Golden Gate Ave., Suite 11000
San Francisco, CA 94102-7004

(List parties served)

There is delivery service by United States Mail at the place so addressed, and/or there is regular communication by mail between the place of mailing and the place so addressed.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: August 6th, 2008,


DECLARANT/PRISONER
Richard J. Crane

Salinas Valley State Prison, DA-196
P.O. Box 1050
Soledad, CA 93460-1050



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DISTRICT OF CALIFORNIA
280 South First Street, #2112
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